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Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No. 515

ROBERT S. BERSON and OSCAR BENNES, et al.,
Petitioners,

vs.

GRAVERAET Y. KAUFMAN, THE FIRST NATIONAL BANK OF CHICAGO, as Trustee under the Will of Otto Young, Deceased, et al.,
Respondents.

See inside caption for full names of both Petitioners and Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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IN THE

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No.

OSCAR BENNES, ROSE BENNES, ROBERT S. BERSON, ROBERT S. BERSON, TRUSTEE, MARION G. BEUERLE, FREDERICK C. BEUERLE, JR., EDMUND W. BOKAT, MAX BLUM, NAOMI BLUMENTHAL, ETHEL F. BRODY, HERMAN BRODY, OSCAR BROWN, HAROLD COHEN, IDA COHEN, FREDERICK CONN, NATHAN CURZON, SOPHYE B. DAVIS, NEKTAR DeFLONDER, STANLEY M. FEUERSTEIN, STANLEY M. FEUERSTEIN and ETHEL F. BRODY, Executors of the Estate of Herman M. Feuerstein, Deceased (sued herein as Herman Feuerstein and Herman M. Feuerstein), BERNICE P. FINKELSON, DAVID HENRY FROMKIN, GOLDEN SLIPPER SQUARE CLUB CAMP, PHYLLIS C. HOFFMAN (sued herein as Phyllis Hoffman), ELIOT HYMAN, FREDERICK K. HYMAN (sued herein as Frederick Hyman), KENNETH HYMAN, NORMAN JAY, ROSE JAY, JESSE KAGLE, SAMUEL KAGLE, SAMUEL KAY, ROSE KLEINMAN, MANFRED LEWANDOWSKI, NELLY LEWANDOWSKI, DORA LOBEL and GERTRUDE BRODY, Trustees for Lobel & Brody, a partnership, IRVING W. LOBEL, DORA LOBEL, LUCILLE LUBIN, MILDRED MITCHELL, BELLE MORDELL, HELENE NATHANSON, ARTHUR N. PIERSON, JR., JACK J. RADER, DAVID REVSIN, PHILIP S. ROSEN, SYDELL SCHECTMAN PIZZETTE (sued herein as Sydell Schectman), MILTON SEAMAN, DAVID B. STILLMAN, LILLIAN N. TANKIN and IRVING L. TANKIN, Trustees for Stuart David Tankin, BELLE ZAVOD, CAROLYN SCHNURER and HENRY LEGUM,

Petitioners,

vs.

GRAVERAET YOUNG KAUFMAN, JANE KAUFMAN HARDING, MARIE LOUISE BRILL, JULIET GRAVERAET KAUFMAN DeMANIO, THE FIRST NATIONAL BANK OF CHICAGO, as Trustee, KARL C. JACOBS, SYLVIA KLEINMAN, Executrix of the Estate of Bernard Kleinman, Deceased, MARTIN M. WAGNER, trustee of certain trusts created by agreement, April 15, 1954, for benefit of Adele Joan Wagner, Raymond Irwin Wagner, Douglas Allan Wagner and Warren James Wagner, LOUIS GOTKIN, JACK STEINBERG, ANNA RHINE, HELEN CAPLAIN, PEARL BOOKIN, MARCIA MITTENTHAL, JACK FISHMAN, JOSEPH FISHMAN, SELMA LASHINE, EMANUEL GELBERG, STANLEY EASTON, ARTHUR SIEGEL, STELLA ETKIN, ARTHUR A. EYTEL, ALEX COHEN, ABRAHAM SILBERMAN, ROSE E. KREIS, Executor of the Estate of Maurice Kreis, Deceased, HENRY FRANKEL, HARRY L. LEWIS, FERD. NEWMAN, FRED NEWMAN, HERMAN ROSENBERG, GERTRUDE LESSEM, HYMAN COHEN, DONALD B. JONES, MARTIN M. WAGNER, ETHEL SIEGEL, RALPH BADER, FREDERICK PHILLIPS, BARBARA ANN PLOTKIN, MORRIS LINN, ROSE LINN, JACK SCHARF, MARTIN SCHARF, PEARL GRUBER, MARTIN A. GRUBER, ABRAHAM DOLLINGER, ISIDORE DOLLINGER, H. GORDON ABRAMS, CHARLOTTE HERDER, JOHN SWARTZ and ALBERT J. LEVIN t a Allied Trading Co., a copartnership, MATTHEW J. KREISBERG, HENRY N. RAPAPORT, REBECCA RUBNER and THE CHEMICAL CORN EXCHANGE BANK as Executors under the Last Will and Testament of Gustave Rubner, Deceased, DR. LOUIS RUTTENBERG, CHARLES H. PENNEYS, Trustee for Gail E. Penneys, SAMUEL R. PENNEYS, Trustee for Jane Lee Penneys, SAMUEL R. PENNEYS, Trustee for Neil S. Penneys, and CHARLES H. PENNEYS, Trustee for Richard R. Penneys, PRESTIGE, INCORPORATED, HARRY EPSTEIN, UNITED JEWISH APPEAL OF GREATER NEW YORK, ETHEL PINCUS and IRWIN PINCUS, Executors of the Estate of Jacob M. Pincus, Deceased, ETHEL PINCUS, LEONARD P. LEVY, HAROLD T. SCHNURER, M. ROBERT FROMKIN, MARGARET DeKORWIN and SIMEON WOLFMAN,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Petitioners, Robert S. Berson and Oscar Bennes, *et al.*, respectfully pray this Court's writ of certiorari to review and reverse the decision of the United States Court of Appeals for the Seventh Circuit in this case.

CITATIONS TO OPINIONS BELOW

The opinion of the United States Court of Appeals for the Seventh Circuit in this case is reported as *Margaret DeKorwin, etc., Plaintiff* v. *The First National Bank of Chicago, etc., et al., Defendants*, 267 Fed. (2d) 337. It is reprinted in full as Appendix I to this Petition.

STATEMENT OF THE GROUNDS ON WHICH THE JURISDICTION OF THIS COURT IS INVOKED

The opinion of the Court of Appeals was filed and its judgment was rendered on March 30, 1959, and a Petition for Rehearing was filed by petitioners, which was denied on June 10, 1959. This Court has entered an order on August 18, 1959, extending the time for the filing of this Petition for Certiorari to November 6, 1959.

This Court's jurisdiction is invoked under Section 1254(1) of the U. S. Judicial Code (U.S.C.A. Tit. 28, Sec. 1254(1)), which confers upon this Court jurisdiction to review decisions of the United States Courts of Appeals.

THE QUESTIONS PRESENTED FOR REVIEW.

I.

A beneficiary of a testamentary trust brought an action in the Federal Court in Illinois to construe the trust so as to adjudicate whether he had a beneficial interest and for an accounting and distribution of the trust estate. The District Court had diversity jurisdiction. At the time the suit was filed, the trust had not terminated. The District Court finally adjudicated that the beneficiary (and other beneficiaries similarly situated) held vested remainder interests in the trust estate.

Between the entry of this final judgment in 1951 and the termination of the trust in 1956, four beneficiaries holding vested remainder interests in the trust assigned portions of their remainder shares to petitioners and other third persons. After the trust had terminated in 1956, the Trustee (as a defendant in the original suit) filed four petitions to compel the four vested remaindermen and their respective assignees to litigate their conflicting claims to ownership of the vested remainder shares in the District Court. At the time that the four petitions were filed, there was no diversity of citizenship between most of the conflicting claimants to such ownership, more than seventy of whom were residents and citizens of the State of New York.

Petitioners were among the assignees claiming interests in the vested remainder shares of the four remaindermen. They vigorously disputed in both the District Court and in the Court of Appeals for the Seventh Circuit (a) the jurisdiction of the District Court over them and over the subject matter of the Trustee's four petitions and (b) the venue of the District Court to entertain the four petitions.